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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ISRAEL RAUL NAVARRO,

Defendant and Appellant.

H045798

(Santa Clara County

Super. Ct. Nos. C1755480, C1525572)

Defendant Israel Raul Navarro pleaded no contest to one felony count of violating a restraining order with a prior conviction (Pen. Code, § 166, subd. (c)(4))<sup>1</sup> and admitted three strike priors (§§ 667, subds. (b)–(i), 1170.12) in exchange for dismissal of several other charges and an agreement he would be sentenced to no more than four years in state prison. At sentencing, the trial court granted Navarro’s motion to dismiss his three strike priors pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*) and imposed the lower term of 16 months, consecutive to his sentence in a separate proceeding. The trial court also ordered Navarro to pay various fines and fees, which are detailed below.

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<sup>1</sup> Unspecified statutory references are to the Penal Code.

We appointed counsel to represent Navarro on appeal. Appellate counsel filed an opening brief stating the case and the facts but raising no specific legal issues. Counsel has declared that she notified Navarro both of her intention to request independent review under *People v. Wende* (1979) 25 Cal.3d 436 and of his right to file written argument on his own behalf. We also notified Navarro of his right to submit written argument on his own behalf within 30 days. That period has elapsed, and we have received no written argument from Navarro.

After independent review of the record, we requested supplemental letter briefs from Navarro's counsel and the Attorney General as to whether the trial court erred in its imposition of restitution fines and fees in light of *People v. Dueñas* (2019) 30 Cal.App.5th 1157 (*Dueñas*), without having first ascertained whether Navarro had an ability to pay. Upon receipt and review of the parties' supplemental briefs, we conclude that defense counsel's failure to object to the imposition of these fines and fees at sentencing rendered any claim of error unpreserved for appellate review. We therefore affirm the judgment.

## **I. STATEMENT OF THE FACTS AND CASE**

On June 25, 2015, T.C. contacted the police in Campbell, California, and reported that Navarro, her ex-boyfriend, had been contacting her by telephone and mail in violation of a restraining order. She informed police that Navarro was sending her letters and calling her while he was in custody at the Santa Clara County Main Jail and the Elmwood Correctional Facility. Police confirmed that the telephone calls to T.C. had been made through a company associated with telecommunication services at correctional facilities.

On November 26, 2016, at around 12:45 a.m., T.C. reported that Navarro was again contacting her in violation of his restraining order, this time from state prison. While police officers were at T.C.'s residence, Navarro called her five times. T.C. answered on speaker phone and Navarro told her she would " 'regret this.' "

During Navarro's incarceration, he called T.C. multiple times and sent her numerous letters. She contacted the Santa Clara County Main Jail and the Elmwood Correctional Facility, asking that they block her telephone number and not allow letters addressed to her to be mailed. The phone calls and letters stopped for a period of approximately one year. Once Navarro was transferred to state prison, however, she began receiving both calls and letters from him again.

On October 5, 2017, Navarro was charged by information with one felony count of stalking while a restraining order or court order was in effect (§ 646.9, subd. (b), count 1), one felony count of violating a restraining order with a prior conviction (§ 166, subd. (c)(4), count 2), one misdemeanor count of violating a protective or stay away order (§ 166, subd. (c)(1), count 3), and one misdemeanor count of using a telephone or electronic communication device with intent to annoy (§ 653m, subd. (b), count 4). The information also alleged that Navarro had three strike priors within the meaning of sections 667, subdivisions (b) through (i) and 1170.12, as well as two prison prior convictions (§ 667.5, subd. (b)).

At a hearing on October 24, 2017, all counts were dismissed pursuant to section 1387.2, and the parties stipulated that the original complaint, filed on October 6, 2017, would serve as the accusatory pleading. The allegations in the original complaint were substantially identical to those in the October 5, 2017 information.

Navarro subsequently moved to dismiss the misdemeanor counts (counts 3 and 4) claiming his right to a speedy trial had been violated. The trial court denied the motion on December 5, 2017.

On December 12, 2017, Navarro pleaded no contest to count 2 (violating a restraining order with a prior conviction (§ 166, subd. (c)(4))) and admitted the three strike prior allegations. In exchange for his plea, all remaining counts and allegations were to be dismissed and Navarro would receive a sentence not to exceed four years in state prison.

At the March 23, 2018 sentencing hearing, the trial court granted Navarro's motion to strike all three strike priors pursuant to section 1385. (*Romero, supra*, 13 Cal.4th 497.) The trial court sentenced Navarro to the lower term of 16 months in state prison, consecutive to the sentence he was then serving in a separate case. Navarro was further ordered to pay a \$300 restitution fine (§ 1202.4 subd. (b)(2)), a \$300 parole revocation restitution fine (suspended) (§ 1202.45), a \$40 court security fee (§ 1465.8), a \$30 criminal conviction assessment (Gov. Code, § 70373), and a \$259.50 criminal justice administration fee (Gov. Code, §§ 29550, 29550.1, 29550.2). The trial court did not conduct an evidentiary hearing on Navarro's ability to pay these fines and fees, and Navarro neither requested a hearing nor objected to their imposition.

Navarro timely appealed, challenging only post plea proceedings. He did not obtain a certificate of probable cause.

## **II. DISCUSSION**

As noted above, we requested supplemental briefing from the parties as to whether the trial court erred in light of *Dueñas, supra*, 30 Cal.App.5th 1157 in imposing restitution fines and fees without having first ascertained whether Navarro had an ability to pay them.

The Attorney General filed a supplemental brief arguing that in this case, unlike in *Dueñas*, Navarro did not object to the fines and fees and has thus forfeited the right to challenge their imposition. Navarro did not address the issue of forfeiture in his supplemental brief but instead argued that the record demonstrates his inability to pay the fines and fees imposed. Navarro maintains this court should either strike them or remand the matter to the trial court for a hearing on his ability to pay.

Based on our review of the transcript of the sentencing hearing, Navarro has forfeited any challenge to the trial court's imposition of fines and fees. As the California Supreme Court has repeatedly held, a defendant's failure to object to the imposition of fines and fees at sentencing constitutes a forfeiture of the right to challenge those fines

and fees on appeal. (See, e.g., *People v. Aguilar* (2015) 60 Cal.4th 862, 864 [the failure to object to fees in the trial court precluded defendant from challenging those fees on appeal]; *People v. McCullough* (2013) 56 Cal.4th 589, 596–597 [defendant forfeits any appellate challenge to the sufficiency of evidence supporting a Government Code section 29550.2, subdivision (a) booking fee if the objection is not raised in the trial court]; *People v. Nelson* (2011) 51 Cal.4th 198, 227 [defendant’s claim that the trial court erroneously failed to consider ability to pay a restitution fine is forfeited by the failure to object]; *People v. Avila* (2009) 46 Cal.4th 680, 729 [rejecting defendant’s argument that he was exempted from the forfeiture rule because his restitution fine amounted to an unauthorized sentence based on his inability to pay].) Navarro does not argue that any exceptions to forfeiture apply. Accordingly, Navarro has forfeited his right to challenge these fines and fees on appeal.

### **III. DISPOSITION**

The judgment is affirmed.

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DANNER, J.

WE CONCUR:

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BAMATTRE-MANOUKIAN, ACTING, P.J.

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GROVER, J.

*The People v. Navarro*  
**H045798**